

DOCKET NO. 9520-002-64

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION OF: Michael G. NATHANS, et al. ART UNIT: 3691
SERIAL NO.: 09/924,971 EXAMINER: Muriel S. Tinkler
CONFIRMATION NO.: 3150
FILING DATE: August 9, 2001
FOR: NATIONAL HOUSING CREDIT REPOSITORY PROTOCOLS

APPEAL BRIEF PURSUANT TO 37 C.F.R. §41.37

COMMISSIONER FOR PATENTS
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SIR:

In support of Appellant's appeal of the Examiner's final rejections dated November 28, 2007, submitted herewith is Appellant's Brief on Appeal.

The Director of the USPTO is hereby authorized to charge any additional fees under 37 C.F.R. Sections 1.16 and 1.7 and credit any overpayment to Deposit Account 50-1442.

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I. Real Parties in Interest

The real party in interest in this patent application is the assignee of the present application: Pay Rent, Build Credit, Inc., One Annapolis Street, Suite 101, Annapolis, Maryland 21401.

II. Related Appeals and Interferences

There are no related appeals or interferences.

III. Status of Claims

Claims 1-20 are pending in the application on appeal. Claims 1-8 and 18-20, which are the subject of this appeal, stand rejected. Claims 9-17 have been withdrawn from consideration. Claims 1-20 are set forth in Appendix A.

IV. Status of Amendments

There were no amendments filed subsequent to final rejection.

V. Summary of Claimed Subject Matter

Claim 1 recites “[a] system for collecting and distributing credit information comprising:”

“a repository database having stored therein residential housing credit payment terms pertaining to a plurality of consumers and a plurality of payees, the payment terms including an amount due and a date on which the amount is due; (page 8, line 15 – page 10, line 29; Fig. 1, reference numeral 122).

a repository management computer connected to the repository database (page 8, lines 15-16), the repository management computer being configured to input residential housing credit payment data pertaining to a plurality of consumers and a plurality of payees from a payment processor computer and to store the residential housing credit payment data in the repository (page 8, line 16 – page 9, line 45; page 15, lines 20-21), the residential housing credit payment

data including an amount paid and a date on which the amount was paid (page 9, lines 36-40), the repository management computer being further configured to compare the residential housing credit payment terms and the residential housing credit payment data and to release credit information indicating a timeliness of payments from the repository database for a particular consumer to a third party (page 5, lines 1-10; page 13, lines 4-12) upon receiving a request from the third party and a corresponding authorization from the particular consumer” (page 6, lines 3-9; page 7, lines 1-12; page 11, line 16 - page 12, line 18).

VI. Grounds of Rejection to be Reviewed on Appeal

The rejection of claims 1-8 and 18-20 under 35 U.S.C. §103(a) are to be reviewed on this appeal. All other claims that are the subject of this appeal depend from claim 1.

VII. Argument

A. Rejection of Claims 1-6, 8 and 18-20 Under 35 U.S.C. § 103(a)

The rejection of claims 1, 4, 5, 6, 8, 19 and 20 under 35 U.S.C. § 103(a) as being obvious over Walker et al. (U.S. Patent No. 6,088,686) in view of Weatherly et al. (U.S. Patent No. 6,049,784), the rejection of claims 2 and 3 under 35 U.S.C. § 103(a) as being obvious over Walker in view of DeFrancesco et al.(U.S. Patent No. 6,587,841), and the rejection of claim 18 under 35 U.S.C. § 103(a) as being obvious over Walker and Weatherly in view of Johnson (U.S. Patent No. 6,529,885), in the Final Official Action dated June 15, 2007 (referred to herein as the “Final Rejection”) should be reversed for the reasons discussed below.

Independent claim 1 is directed toward a system for collecting and distributing credit information. The claim includes specific requirements for both (i) the type of credit information that is collected and distributed, and (ii) the conditions under which the credit information is collected and distributed. In particular, claim 1 specifies the type of credit data: “residential housing credit payment data pertaining to a plurality of consumers and a plurality of payees . . .

the residential housing credit payment data including an amount paid and a date on which the amount was paid.” Furthermore, claim 1 specifies the conditions under which the data is collected - the data must be collected “from a payment processor” and must be distributed to “a third party” and only when a “corresponding authorization from the particular consumer” is provided. The third party is neither the payee nor the payor nor an entity associated with the system.

The Final Rejection relies on Walker at col. 8, lines 28-36 as disclosing the reporting of payment information to a third party for the purposes of deciding whether to extend credit. The cited passage of Walker recites that “an applicant’s good credit experience, monthly income and monthly debt payments (incorporating estimated monthly payment data associated with the newly created debt) are systematically evaluated upon transmission of the credit request . . . This process uses monthly credit bureau information, including mortgage payments”. The “monthly debt payments” and “mortgage payments” recited in this passage refer to payments that must be made by the applicant in the future, not to past payment data. This point has apparently been conceded by the examiner, as the “Response to Arguments” section on page 2 of the Final Rejection includes an emphasis on “good credit experience,” indicating an intention to rely on that portion of the passage rather than the aforementioned “monthly debt payments” and “mortgage payments.”

The “good credit experience” recitation of Walker refers to credit bureau information (Walker at col. 8, line 35). As discussed in the previous response, credit bureau information typically does not include “an amount paid and a date on which the amount was paid” as required by claim 1. Moreover, the credit bureau information is not collected “from a payment processor” as required by claim 1. The Final Rejection concedes these points and attempts to

cure these deficiencies through reliance on Weatherly. Unlike Walker, which is directed toward a system used by a lending institution such as a bank to determine whether to grant an application for credit, Weatherly refers to a system that is used by an intermediary that collects and guarantees lease payments by a lessee to a landlord (Weatherly at col. 1, lines 45-58). The Final Rejection relies on the passage at col. 2, lines 20-29, which discloses that the intermediary monitors lease payment activity in order to perform its guaranty obligations to the lessor.

Weatherly, however, does not disclose the reporting of payment data to any third party. At best, assuming *arguendo* that a payment to a lessor by the intermediary in satisfaction of its guaranty obligations (as discussed at col. 2, lines 38-39) could be considered reporting of a payment, such information does not include an amount paid and a date on which the payment was made *by the consumer* because in this case the consumer has failed to make any payment, and the payment information is not reported to a third party because it is the lessor (which corresponds to the payee of claim 1) to whom the payment was made. Thus, the most that Weatherly discloses is the storing (not reporting) of data by a payment processor (the intermediary). The combination of Weatherly and Walker also does not disclose or suggest releasing credit information to a third party upon receiving “a corresponding authorization from the particular consumer” as required by claim 1. Applicants note that the Final Rejection asserts at page 4 that Weatherly discloses “obtaining approval from the lessee on page 2 and lines 20-29.” The “approval” referred to in this passage of Weatherly is the lessee’s approval of a **lease**, there is no discussion in Weatherly of any “approval” or “authorization” by the consumer of reporting credit information to a third party as required by claim 1.

Applicants further note that Walker’s system likewise does not disclose any information to any third party – the system is run by a bank, and the only disclosure the bank makes is to the

consumer, not a third party. Moreover, the information “reported” to the consumer by Walker’s system is not payment data but rather an indication of whether the consumer’s application has been accepted. Therefore, Walker also fails to disclose any authorization of the release of credit information to a third party as required by claim 1.

Applicants note that the Final Rejection fails to set forth any rationale for combining Walker with Weatherly. Walker is directed toward a system that is used by a bank to determine whether, and under what terms, to extend credit. Weatherly is directed toward a system that is unrelated to extending credit but rather is concerned with a system used by a guarantor of lease payments. The Final Rejection simply notes that Weatherly’s system involves recording data relating to lease payments and states at page 5 that “[t]herefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Walker’s retail credit database according to Weatherly for use in credit checks for retail housing agreements the [sic] expedite the credit checks and obtain preliminary approvals for credit.” This is nothing more than an assertion that the invention is obvious because all of the claim limitations are allegedly found in the prior art. This, of course, is not sufficient to support an obviousness rejection. As noted in *KSR*, “a patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.” *KSR International Co. v. Teleflex, Inc.*, 82 USPQ2d 1385, 1398 (U.S. 2007).

The Supreme Court also stated that “it can be important to identify a reason that would have prompted a person of ordinary skill in the art to combine the elements as the new invention does.” *Id.* “This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” *Id.*

The examiner has not provided any rationale for this rejection. Unlike the situation in *KSR*, the examiner has not cited any trend in the industry or market demand for a) collecting residential housing credit data, b) collecting payment data from payment processors rather than payees, or c) giving consumers the ability to authorize the release of credit data. Indeed, *KSR* specifically requires that some rationale for a proposed combination be articulated because it recognizes that the mere presence of claim elements in prior art references is not sufficient to support an obviousness rejection. Moreover, as discussed above, the requirement in claim 1 for consumer authorization for the release of credit information is not present in either Walker or Weatherly. Accordingly, the office fails to state a *prima facie* of obviousness and its rejection of claim 1 should be reversed. The rejection of claims 2-8 and 18-20 should be reversed for the reasons discussed above.

A. Rejection of Claim 7 Under 35 U.S.C. § 103(a)

The rejection of claim 7 under 35 U.S.C. § 103(a) as being obvious over Walker, Weatherly and DeFrancesco in view of Fletcher et al. (U.S. Patent No. 6,112,190, hereinafter “Fletcher”) should also be reversed for reasons in addition to those discussed above. Claim 7 is directed toward the concept of calculating a credit score that depends on both housing credit data and retail credit data, wherein “the housing credit data is more heavily weighted than the retail credit data.” This claim is directed toward the discovery by the inventors that housing credit information is more predictive of future housing credit behavior than the retail credit information typically available from traditional credit bureaus as discussed in the specification at page 6, lines 10-23.

In rejecting claim 7, the Final Rejection relies on a passage in Fletcher at page 3, lines 1-3 that states “[i]t is a further object of the present invention to use automatically an evidence tree

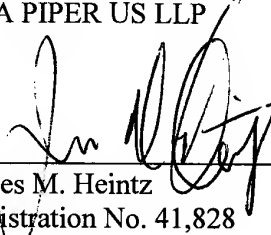
analysis method with weights for different nodes and factors in the evidence tree.” The Final Rejection then concludes that it would have been obvious to weight factors of the application and “that housing credit data should be more heavily weighted than retail data because the database is for use in housing credit data and weighting the elements of the application will allow for a more accurate evaluation of the potential for housing payments.” Final Rejection at 6. This reasoning is flawed. The weighting for different nodes and factors discussed in cited passage of Fletcher is not weighting credit data from different types of loans, but rather weighting different factors such as business income, surplus personal income, mortgage loan to value, etc. as shown in Fig. 14 of Fletcher. There is no disclosure in Fletcher of weighting credit data from different types of loans separately. Moreover, even if there were such a suggestion in Fletcher, such a teaching would not inform one of skill in the art as to which types of credit data should be weighted more heavily than others. The statement in the Final Rejection that weighting housing credit data more heavily than others would provide more accurate evaluation is unsupported by any citation to any reference with such a teaching. Applicants note that the use of credit reports in evaluating housing credit applications is widespread as anyone who has attempted to rent an apartment can attest. This widespread use, coupled with the inability of the examiner to locate any reference teaching that such credit reports should have scores that weigh past housing credit payment data more heavily than payment data relating to retail credit such as automobile loans and department store credit cards, is a strong indication of non-obviousness. Therefore, the rejection of claim 7 should be reversed.

VIII. CONCLUSION

For the reasons discussed above, reversal of the final rejection of claims 1-8 and 18-20 is respectfully requested.

Respectfully submitted,

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IX. CLAIMS APPENDIX

1. A system for collecting and distributing credit information comprising:

a repository database having stored therein residential housing credit payment terms pertaining to a plurality of consumers and a plurality of payees, the payment terms including an amount due and a date on which the amount is due;

a repository management computer connected to the repository database, the repository management computer being configured to input residential housing credit payment data pertaining to a plurality of consumers and a plurality of payees from a payment processor computer and to store the residential housing credit payment data in the repository, the residential housing credit payment data including an amount paid and a date on which the amount was paid, the repository management computer being further configured to compare the residential housing credit payment terms and the residential housing credit payment data and to release credit information indicating a timeliness of payments from the repository database for a particular consumer to a third party upon receiving a request from the third party and a corresponding authorization from the particular consumer.

2. The system of claim 1, wherein the repository management computer is configured to require a password from the particular consumer before releasing the credit information.

3. The system of claim 1, wherein the repository management computer is configured to require a personal identification number from the particular consumer before releasing the credit information.

4. The system of claim 1, wherein the repository management computer is connectable to receive card reader data and configured to require that data received from the card reader match card data associated with the particular consumer before releasing credit information to the residential housing credit provider.

5. The system of claim 1, wherein the credit information is released in the form of a score based at least in part upon the payment data.

6. The system of claim 5, wherein the score is further based at least in part on retail credit data.

7. The method of claim 6, wherein the housing credit data is more heavily weighted than the retail credit data.

8. The system of claim 1, wherein the repository further contains retail credit payment data.

9. A method for reporting residential housing credit payment information comprising the steps of:

accepting residential housing credit payments at a financial institution;

crediting the payments to a residential housing credit provider; and

reporting the payments to a residential housing credit repository.

10. The method of Claim 9, further comprising the steps of:

storing the payment in an escrow account if the payment is designated as for escrow; and

releasing the payment from the escrow account upon the occurrence of a predetermined release event;

wherein the crediting step is performed after the releasing step.

11. The method of Claim 10, wherein the predetermined release event is the issuance of a judgment in favor of the housing credit provider from a court of competent jurisdiction.

12. The method of Claim 10, wherein the predetermined release event is an arbitration.

13. The method of Claim 10, further comprising the step of reporting the payment to the creditor.

14. The method of Claim 10, further comprising the step of reporting the predetermined release event to the creditor.

15. The method of Claim 10, further comprising the step of reporting the predetermined release event to the repository.

16. A method for collecting and distributing housing credit payment data comprising the steps of:

accepting housing credit payments at a financial institution from a consumer;

crediting the payments to a housing creditor or to an escrow account in response to an indication by the consumer;

reporting the payments to a housing credit payment repository and the housing creditor;

maintaining a housing credit payment database at the repository, the database containing housing credit payment data for a plurality of consumers;

reporting the housing credit payment data for a particular consumer to a potential housing creditor only if the particular consumer authorizes the repository to release the housing credit payment data to the potential housing creditor.

17. The method of Claim 16 further comprising the step of:
reporting a release event to the repository and the housing creditor.

18. The system of claim 1, wherein the payment processor computer provides the consumer with an option to designate a payment to be held in escrow.

19. The system of claim 1, wherein actual payment dates and amounts for a plurality of payments are stored in the repository.

20. The system of claim 19, wherein credit information released to the third party includes the actual payment dates and amounts for the plurality of payments stored in the repository.

X. EVIDENCE APPENDIX

None.

XI. RELATED PROCEEDING APPENDIX

None.